IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2)(b)

Description of case

Criminal Appeal No.736 of 2001
(Old No.586 of 1984)

Date of decision: 20/09/2004

For the Approval of:

Hon'ble Mr. Justice J.C.S. Rawat

-Whether the order/judgment should be sent to the reporters for reporting?
(Yes)

-Whether the reporters be allowed to see the judgment?
(Yes)

Dated: 20.9.2004
LSR

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 736 of 2001
(Old No.586 of 1984)

1. Dalbir Singh S/o Sri Singhara Singh
   R/o village Bharatpur
   P.S. Kashipur
   District Nainital
2. Singhara Singh
   S/o Laxman Singh
   R/o village Bharatpur
   P.S. Kashipur
   District Nainital ……Appellants

Versus

State ……Respondent

Hon'ble J.C.S. Rawat, J.

This is a criminal appeal against the judgment and order dated 22.2.1984 passed by Sri B.B. Agarwal, the then IInd Additional Sessions Judge, Nainital in S.T. NO.129/1981 connected with S.T. No.60/1983, whereby the IInd Addl. Sessions Judge has convicted the appellant-Dalbir Singh & sentenced him to undergo RI for Four Years under section 307 IPC and further convicted and sentenced the appellant-Singhara Singh to pay a fine of Rs. 500/- under section 30 Arms Act. In default of payment, the appellant to undergo two months RI.

2. Perusal of the record reveals that on 4.5.2002 the appeal was abated against the appellant-Singhara Singh.

3. The brief facts of the case are that on 5.2.1980 at about 9:45PM S.I. Sri Shiv Singh Rana (PW-1) alongwith the police party was on patrol duty for checking the traffic. When the police party reached near the crossing of Kaliyawala they saw three persons coming from the side of Kashipur on a motorcycle. The police party stopped the motorcycle as a result of which all the three riders tried to escape from the spot. On exhortation of the two persons, one of them made three fire-shots upon the police party. The third shot was missed and it remained in the chamber of the revolver. The police party was successful in apprehending one miscreant – Dalbir Singh, however the rest of the two persons made their escape good from the spot. One revolver having one

missed cartridge in its chamber and six cartridges in the magazine was taken into possession by the police. One bandolier with 9 cartridges attached with the cover of the revolver was also recovered from the possession of appellant-Dalbir Singh and these articles were sealed in a separate bundle. One motorcycle bearing No.UTF 1051 was also taken into possession by the police in its custody and the fard Ex.Ka. 1 was prepared at the spot. Appellant-Dalbir Singh disclosed the names of his other companions as Autar Singh and Karnail Singh. The remaining two miscreants were identified by the police party in the light of the torch. Thereafter, an FIR (Ex.Ka.2) was lodged at the police station and a case was registered against the accused persons under section 307 IPC and section 25 Arms Act. The investigation of the case was entrusted to S.I. Hari Singh Bhakuni (PW-3) and later on the investigation was entrusted to Balbir Singh, who submitted the chargesheet Ex. Ka.9 after completing the investigation.

4. Charges were framed against the accused under section 307 IPC and section 25 Arms Act. The accused denied the charge and claimed to be tried.

5. In order to prove its case the prosecution examined four witnesses. Shiv Singh Rana (PW-1) is the complainant. Sakambar Datt (PW-2) and Haripal Singh (PW-4) are said to be the eye witnesses of the incident. Hari Singh Bhakuni (PW-3) is the investigation officer of the case. He prepared the site plan (Ex.Ka.4).

6. The appellants in their statement under section 313 of the Cr.P.C. denied the charges and they further stated that they have been falsely implicated due to enmity. Appellant-Singhara Singh is the father of the other appellant-Dalbir Singh. The pistol and the cartridges were not recovered from his possession.

7. The learned IInd Addl. Sessions Judge on his appreciation of the evidence on record held that the prosecution had proved its case against the appellant-Dalbir Singh under section 307 IPC and further held that

the prosecution had proved its case against the appellant-Singhara Singh under section 30 Arms Act.

8. I have heard Sri J.S. Virk learned counsel for the appellant and Sri Amit Bhatt learned A.G.A. I have also gone through the evidence and material on record.

9. At the outset, I have to consider whether the prosecution had proved the case against the appellant-Dalbir Singh under section 307 IPC or not. The prosecution has adduced the evidence of Shiv Singh Rana (PW-1), Sakambar Datt(PW-2) and Harpal Singh (PW-4). All the three witnesses are said to be the eye witnesses of the incident. All the said witnesses had stated in their evidence that on 5.2.1980 at about 9:45 PM they were on petrol duty. When they reached near the crossing of Kaliyawala they saw three persons coming from the side of Kashipur on a motorcycle. They tried to stop the motorcycle but the accused (riders) tried to escape from the spot. One of them was armed with revolver and on being exhorted by other two persons he fired three shots upon them. However, the third shot was missed and it remained in the chamber of the revolver. The prosecution has also alleged in the evidence that none of the fired shots could hit the police party. The police party successfully apprehended one of the accused (Dalbir Singh) and rest of the two persons made their escape good from the spot. On enquiry being made the accused (Dalbir Singh) disclosed the name of his companions.

10. The learned counsel for the appellant has submitted that the prosecution has not produced copy of General Diary by which it could have been proved that the police party was on the patrolling duty and further submitted that the evidence of prosecution witnesses is not probable and deliverable because their presence at the spot is doubtful by not producing the copy of the General Diary. The learned A.G.A. also admitted that the copy of the General Diary is not on record and further submitted that the non-submission of the copy of the G.D. does not lead to any adverse inference to the prosecution case. Perusal of the record reveals that Shiv Singh Rana (PW-1) had stated in evidence that he alongwith H.C. Shakambhar Datt (PW-2), Constables Harpal Singh

(PW-4), Dharam Pal Singh and Hayat Singh was on the petrol duty for checking of the terrific. The prosecution has withheld the copy of the G.D. which could only show that they were on petrol duty. The non-submission of the copy of the *rawanagi* of the said police personnel creates a doubt about the presence of the prosecution witnesses at the spot. The appellant-Singhara Singh had stated in his statement under section 313 of the Cr.P.C. that there was some quarrel between S.O. Jaspur and due to quarrel S.O. took his revolver and falsely implicated him and his son in this case. Apart this, the police had obtained the sanction from the District Magistrate, Nainital for prosecution of the appellant-Dalbir Singh under section 25 Arms Act. Perusal of the sanction reveals that the police did not produce the file of Dalbir Singh and placed the file of State Vs. Jagdish Singh for obtaining the sanction against the appellant-Dalbir Singh and sanction was granted by the District Magistrate against the appellant. This fact clearly reveals that the police was interested to implicate the appellant-Dalbir Singh by hook or crook. Thus, the evidence led by the prosecution with regard to the presence of the police party becomes doubtful at the spot. The appellant-Dalbir Singh is liable to be acquitted on this score alone.

11. It has been further submitted that the fire-shots were made from a very close distance and surprisingly the police party did not sustain any injury on their person. The learned A.G.A. refuted the contentions. Perusal of the record reveals that the fire-shots were made from a very close distance and it did not hit the police party at all. It is highly improbable which creates a doubt about the credibility of the prosecution evidence.

12. The learned counsel for the appellant has submitted that the fard Ex.Ka.1 did not specifically disclose that the fire-shots were made by the appellant-Dalbir Singh and there is no averment in the FIR that the appellant Dalbir Singh had fired the shots upon the police party. This fact also makes the prosecution story doubtful. Perusal of the record reveals that it had not been specifically mentioned in the fard Ex.Ka.1 that the shots were fired by the appellant-Dalbir Singh. Appellant-Dalbir Singh was arrested on the spot and a revolver and cartridges were taken

into possession by the police. If the appellant-Dalbir Singh would have fired upon the police party it would have definitely been mentioned in the fard Ex.Ka.1 Mere arrest of the appellant-Dalbir Singh having a revolver and cartridges did not prove the factum that the fire-shots were made by the appellant-Dalbir Singh. The prosecution has further produced the copy of the identification memo held on 31.1.1998 the accused-Autar Singh was placed for identification parade and in the column no.7 it has been mentioned that Autar Singh was put for identification as the person who had fired the shots upon the police party. Meaning thereby, the prosecution was of the view that the appellant-Dalbir Singh had not fired the shots upon the police party. In case, the prosecution was confined that the appellant-Dalbir Singh had fired shots upon the police party then there was no question of putting Autar Singh for identification as a person who had fired the shots upon the police party. Thus, this fact further creates the doubt about the veracity of the prosecution evidence.

13. In view of the foregoing discussion, I am of view that the evidence of the recovery and arrest of the appellant-Dalbir Singh also does not inspire confidence and the appellant could not be saddled with the liability of committing the crime. Therefore, the appellant deserves to be acquitted of the charge leveled against him.

14. For the aforesaid reasons, the appeal succeed and is hereby allowed. The judgment and order dated 22.2.1984 passed by the then Addl. Sessions Judge, Nainital is set aside. The appellant- Dalbir Singh is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged.

15. Let the record be sent back to the court concerned and compliance report to be submitted within two months.

(J. C. S. Rawat, J.)

Dated 20.9.2004

Rawat